

Exhibit 18

COPY

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1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK3
4 ORCHARD HOTEL, LLC,

5 Plaintiff,

6 - against -

Index No.
850044/20117 D.A.B. GROUP LLC, ORCHARD CONSTRUCTION LLC,
8 FLINTLOCK CONSTRUCTION SERVICES, LLC, JJK
9 MECHANICAL INC., EDWARD MILLS & ASSOCIATES,
10 ARCHITECTS PC, CASINO DEVELOPMENT GROUP,
11 INC., CITYWIDE CONSTRUCTION WORKS INC.,
12 EMPIRE TRANSIT MIX INC., MARJAM SUPPLY CO.,
13 INC., ROTAVELE ELEVATOR INC., SMK
14 ASSOCIATES INC., FJF ELECTRICAL CO. INC.,
15 CITY OF NEW YORK, NEW YORK STATE
16 DEPARTMENT OF TAXATION AND FINANCE,
17 LEONARD B. JOHNSON, CITY OF NEW YORK
18 ENVIRONMENTAL CONTROL BOARD, BROOKLYN
19 FEDERAL SAVINGS BANK, STATE BANK OF TEXAS,
20 JOHN DOE #1 THROUGH JOHN DOE #100, the
21 last 100 names being fictitious and unknown
22 to plaintiff, the persons, or parties
23 intended being the tenants, occupants,
24 persons or corporations, if any, having or
25 claiming an interest in or lien upon the
premises described in the complaint,

Defendants.

228 East 45th Street
New York, New York20
21 January 7, 2013
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2 Notary Public of the State of New York, taken pursuant to
3 Article 31, Section 3101 et seq. of the C.P.L.R., and
4 pursuant to Judicial Subpoena and Notice Of Deposition
5 Upon Oral Examination.

6 * * * * * * * * *

7
8 A P P E A R A N C E S:

9
10 MORRISON COHEN LLP
11 Attorneys for Plaintiff, ORCHARD HOTEL, LLC
12 and Defendant, ORCHARD CONSTRUCTION, LLC
13 909 Third Avenue - 27th Floor
14 New York, New York 10022

15 BY: BRETT D. DOCKWELL, ESQ.

16 FAVATA & WALLACE, LLP
17 Attorneys for Defendant, D.A.B. GROUP, LLC
18 229 Seventh Street - Suite 300
19 Garden City, New York 11530

20 BY: WILLIAM G. WALLACE, ESQ.

21 HOLLANDER & STRAUSS, LLP
22 Attorneys for Defendant, FLINTLOCK
23 CONSTRUCTION SERVICES, LLC
24 40 Cutter Mill Road - Suite 203
25 Great Neck, New York 11021

26 BY: LARRY HOLLANDER, ESQ.

27 (Continued...)

1

2 A P P E A R A N C E S Continued:

3

4 INGRAM YUZEK GAINEN CARROLL & BERTOLOTTI, LLP
5 Attorneys for Defendant, EDWARD MILLS &
6 ASSOCIATES, ARCHITECTS PC
7 250 Park Avenue
8 New York, New York 10177

9
10 BY: TARA B. MULROONEY, ESQ.

11

12 O'REILLY, MARSH & CORTESELLI, P.C.
13 Attorneys for Non-party Witness,
14 JOANNE B. GALLO
15 222 Old Country Road - 2nd Floor
16 Mineola, New York 11501

17 BY: JAMES G. MARSH, ESQ.

18

19

20

21 ALSO PRESENT:

22

23

24

25

BEN ZHAVIAN

20 *** * *** * ***
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Reporting, inc.

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(516) 248-1020

1 B. Gordon

2 A. Yes.

3 Q. When did you first become aware of that loan?

4 A. Around September of 2010.

5 Q. How was it brought to your attention and why
6 was it brought to your attention?

7 A. Joanne had a call scheduled with the owner
8 and she asked me the day before to take a look at the
9 file and to take a look at it and join her on the call.
10 We had a rule that two people had to be on a call and
11 nobody else was familiar with it. Actually, we were the
12 work-out department at the time, so I had to be on pretty
13 much every call.

14 Q. So it was just the two of you?

17 Q. Do you know why this particular loan was in
18 the work-out area of the bank at that time?

19 A. No.

20 Q. To your knowledge, was it a non-performing
21 loan, was it delinquent in some respect?

22 A. I remember Joanne telling me at the time
23 they had two issues with it.

24 0. Do you remember what they were?

25 A. One was that it was being built in excess of

1 B. Gordon

2 did I maintain a desk file?

3 Q. Yes.

4 A. No.

5 Q. Do you have any personal records, at home or
6 some place else, at your office now, regarding that
7 period of time?

8 A. No.

9 Q. This meeting that took place with Rick Maher
10 and the owner and some others and Joanne Gallo and
11 yourself, what was discussed at this first meeting that
12 you were at?

13 A. It arose because we were asked to make an
14 advance and Flintlock, who by then, whenever this was,
15 was the general contractor, refused to sign the lien
16 release.

17 Q. And what was discussed at the meeting?

18 A. Why they wouldn't sign the lien release and
19 why we wouldn't advance unless they did.

20 Q. Is it fair to say they wouldn't sign the
21 lien release because they believed they were owed some
22 money?

23 A. Well, they said they hadn't been paid.

24 Q. Did that meeting result in a resolution of
25 some kind?

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1 B. Gordon

2 guidelines or guidelines between you and Ms. Gallo as the
3 work-out department at the time, that would determine
4 what loans would be included in the virtual data room?

5 A. There were no written guidelines. We went
6 through the portfolio together and with the approval of
7 the loan work-out committee of the board, put certain
8 loans up for sale.

9 Q. Do you recall addressing the topic of the
10 Allen Street Hotel or Orchard Street Hotel loan?

11 A. Not specifically. You mean to put it up on
12 --

13 Q. Yes.

14 A. No. I mean, we looked at over a hundred
15 loans.

16 Q. Do you have any recollection, as you sit
17 here today, as to why that particular loan -- I know
18 technically it's two loans we're talking about but one
19 project -- why that particular loan was included, it was
20 decided among you to include it in the virtual data room?

21 A. Not specifically. Let me think about that.
22 I think I remember our motivation.

23 Q. And what was that?

24 A. That we didn't trust Mr. Zhavian.

25 Q. Let me go back.

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B. Gordon

4 A. Well, the project itself had some problems.

5 Q. What were those?

6 A. There was a restaurant foundation built on
7 property that we didn't have a mortgage on that was
8 adjoining that another bank did.

9 Q. Anything else?

10 A. There were two extra floors and we weren't
11 necessarily sure the project would be, the superstructure
12 would be completed in time to grandfather them. And
13 Mr. Zhavian had, on more than one occasion, failed to pay
14 the contractor with funds that we had advanced.

15 Q. So, when you first heard from Mr. Aviram, I
16 believe you said it was through Miss Gallo, she either
17 referred --

18 A. Well, he called her. I don't think she knew
19 him either.

20 Q. What was the initial conversation like?

21 A. He had gone through the portfolio and he
22 had, I think, three loans that he was interested in
23 buying. I don't remember what the other two were.

24 Q. Did there come a point in time when he made
25 an offer on this particular loan?

1 B. Gordon

2 A. Yes, subject to due diligence.

3 Q. And before that was there any other interest
4 by any other parties in this project?

5 A. I don't remember.

6 Q. In the early part of 2011, January,
7 February, was there any discussion with the owner,
8 Zhavian or anybody on his behalf, regarding an extension
9 of the maturity date of this loan?

10 A. I believe there was.

11 Q. Were you engaged in that conversation?

12 A. Peripherally. Joanne was actually doing the
13 talking. But I was aware of it.

14 Q. What were you aware of?

15 A. That it had a maturity coming up. I forget,
16 March, April, something like that. And that Mr. Zhavian
17 obviously wanted to extend it and that we were
18 considering it. Or considering taking it to the board
19 actually would be more accurate.

20 Q. And that would have to go to the work-out
21 committee of the board?

22 A. Yes.

23 Q. Do you remember who was on that work-out
24 committee of the board back in 2011?

25 A. Mr. Kielty, Mr. Williams, a lady lawyer,

1 B. Gordon

2 Q. And again, just generally, not specifically
3 to this loan, if it was a performing loan and your group,
4 for lack of a better term, would recommend to the loan
5 committee to either modify or extend a term on a fully
6 performing loan, that decision ultimately could be made
7 by the committee; correct?

8 A. Yes.

Q. It did not need full board approval?

10 A. Unless it was an awfully big loan.

11 Q. Now, things were a little different in the
12 latter part of 2010 into 2011, because the OTS had some
13 involvement, did it not?

14 A. Starting sometime in the first quarter of
15 2011, yes.

16 Q. So, you're not there as long as OTS is
17 there?

18 A. A few months.

19 Q. But that's the life of a work-out guy, I
20 guess.

21 A. Yes.

22 Q. If a loan, again just generally speaking, if
23 a loan at that time were to be either modified or
24 extended, the term, it would require OTS approval? Do
25 you know?

1 B. Gordon

2 It was during that period, I believe, that we sent it to
3 the OTS. When they actually asked, I don't know.

4 Q. So, you think it may be a little earlier
5 than that?

6 A. No idea.

7 Q. My question then is, you, and when I say you
8 I'm talking about you and Joanne, maybe a third person,
9 made the recommendation to the committee; correct, the
10 bank committee?

11 A. Yes.

12 Q. And the bank committee authorized you then
13 or Joanne to make the request of OTS?

14 A. Yes.

15 Q. And Joanne did make the request of OTS?

16 A. As far as I remember, yes.

17 Q. Do you recall ever receiving or Joanne ever
18 telling you that she received a response from OTS on that
19 request?

20 A. No.

21 Q. No, you don't recall or no, you never got a
22 response?

23 A. As far as I know, we never got a response.

24 Q. Did Joanne ever contact OTS after the
25 request was made, following up on the status of the

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1 B. Gordon

2 We looked and couldn't find a set in the office.

3 Q. When you say "our engineer," you're talking
4 about Mr. Koch?

5 A. Yes.

6 Q. He was an outside contractor for the bank?

7 A. Yes.

8 Q. He was not employed by the bank, was he, as
9 far as you know?

10 A. He wasn't an employee, he was like me, a
11 consultant.

12 Q. Do you know when the sale of loan actually
13 closed?

14 A. Not specifically. It took awhile. April or
15 May I'm thinking of 2011.

16 Q. I'm going to show you what has been
17 previously marked at Miss Gallo's deposition as I
18 (handing). Take a look at that, see if that refreshes
19 your recollection.

20 A. Okay, let's see how good my recollection is.
21 That late (referring)? Okay.

22 I guess it was after June 3rd (referring).

23 Q. If I told you it was June 17th, does that
24 mean anything?

25 A. No. I believe you.

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1 B. Gordon

2 MR. WALLACE: Do you want to jump in
3 and I'll look at my notes? So I don't hold
4 things up (referring).

5 MR. HOLLANDER: Sure.

6

7 EXAMINATION BY MR. HOLLANDER:

8 Q. Good afternoon, Mr. Gordon.

9 A. Good afternoon.

10 Q. Larry Hollander. I represent Flintlock
11 Construction Services.

12 A. How are you?

13 Q. Fine. Nice to meet you.

14 I'm going to refer to them either as
15 Flintlock or FCS, Flintlock Construction Services.

16 A. Yes, I've seen that.

17 Q. Did you personally have any involvement with
18 respect to approval or any action whatsoever by Brooklyn
19 with respect to the Flintlock/D.A.B. construction
20 contract?

21 A. No.

22 Q. Would it be fair to say that you first saw
23 the contract well after August of 2010?

24 MR. MARSH: Objection to the form of
25 the question.

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